Supreme Court, U.S.
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No. 09-11556

IN THE

Supreme Court of the United States

CONFERENCE
NOV - 5 2010

JOSE TOLENTINO,

Petitioner,

- versus -

STATE OF NEW YORK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the exclusionary rule applies to preexisting government records obtained after an allegedly unlawful traffic stop, where the only link between the two is that the police learned the petitioner's identity as a result of the stop?

OPINIONS BELOW

The opinion of the New York Court of Appeals is reported at 14 N.Y.3d 382, 926 N.E.2d 1212. Pet. App. A1-A7. The opinion of the Appellate Division of the Supreme Court of the State of New York, First Department, is reported at 59 A.D.3d 298, 873 N.Y.S.2d 602. Pet. App. A1-A7. The opinion of the Supreme Court of the State of New York, New York County is unreported. Pet. App. A9-A10.

JURISDICTION

The New York Court of Appeals rendered its decision on March 30, 2010. The petition was filed on June 22, 2010. Petitioner properly invokes this Court's jurisdiction under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

On January 1, 2005, several New York City police officers stopped petitioner, who was driving in Manhattan, for playing his music too loudly. They ascertained his identity and ran a computer check of petitioner's New York State Department of Motor Vehicles ("DMV") records. That check revealed that petitioner's license had been suspended, and that he had received at least ten suspensions on at least ten different dates for failure to answer a summons or pay a fine. Petitioner was charged with one count of Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree. See N.Y. Veh. & Traf. Law § 511(3)(a)(i).

Petitioner moved to suppress his DMV records and statements he made after his arrest as, inter alia, the product of an unlawful police stop of his vehicle.

Alternatively, petitioner requested that the court hold a Mapp hearing[1] on these motions. Pet. App. A12. In his motion, petitioner noted that the felony complaint alleged that an officer had conducted a computer check of his DMV records, which revealed that his license had been suspended. As a general matter, "[t]he steps required to obtain a DMV records check are the stop of the vehicle and the elicitation of the driver's name or the driver's license number." Pet. App. A21. While acknowledging that DMV records are public records that existed in computerized form prior to his arrest, see Pet. App. A23, petitioner claimed that the police would not have obtained his DMV records "[b]ut for his unlawful seizure by the police . . . and they are therefore the fruit of the police illegality." Pet. App. A21.

The People opposed petitioner's motion on two grounds: first, that the officers' stop of petitioner was lawful, and second, that even if petitioner had been stopped illegally, the exclusionary rule had no application. Pet. App. A39-A42. With regard to the second point, the People argued that the Fourth Amendment imposes no sanction when an unlawful stop leads to discovery of a person's identity, which in turn leads to pre-existing official records. Pet. App. A39-A42.

While allowing a hearing on whether to suppress statements made by petitioner at the time of the stop, the trial court denied petitioner's request for a suppression

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[1] A Mapp hearing is conducted to determine whether evidence was obtained as a result of a Fourth Amendment violation, and thus must be suppressed under the exclusionary rule. See Mapp v. Ohio, 367 U.S. 643 (1961).

hearing regarding the DMV records.[2] The court concluded that "[a]n individual does not possess a legitimate expectation of privacy in files maintained by the [DMV] and such records do not constitute evidence which is subject to suppression under a fruit of the poisonous tree analysis." Pet. App. A9-A10.

On August 3, 2005, petitioner pled guilty to Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree, which was the sole count in the indictment. He entered this plea before any hearing could be held on his motion to suppress his statements. On September 28, 2005, he was sentenced to five years probation.

Petitioner's subsequent appeal of the order denying his motion to suppress the DMV records was rejected.[3] Before New York's intermediate appellate court (the Appellate Division, First Department), petitioner claimed, inter alia, that the trial court had erred in holding that the exclusionary rule had no application to DMV records, and he sought a remand for a hearing on his motion to suppress those records. The Appellate Division unanimously affirmed. Pet. App. A8. The court recognized that "a defendant need not establish a privacy interest in an alleged fruit of a preexisting violation of his or her Fourth Amendment rights." Pet. App. A8. With respect to the

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[2] Under New York's criminal procedure law, a court may deny a suppression motion without a hearing if the motion papers do not allege a legal basis for suppression. See N.Y. Crim. Proc. Law § 710.60(3)(a).

[3] New York's criminal procedure law allows a defendant to appeal a final order denying a motion to suppress evidence, "notwithstanding the fact that such a judgment is entered upon a plea of guilty." N.Y. Crim. Proc. Law § 710.70(2).

scope of the "fruits" doctrine, the Appellate Division held that "DMV records are not suppressible fruits." Pet. App. A8. In INS v. Lopez-Mendoza, 468 U.S. 1032, 1039 (1984), the Court stated that "[t]he identity of a defendant is never itself suppressible as a fruit of an unlawful arrest." Thus, the court concluded, "'there is no sanction to be applied when an illegal arrest only leads to discovery of [a person's] identity and that merely leads to the official file'" Pet. App. A8 (quoting United States v. Guzman-Bruno, 27 F.3d 420, 422 [9th Cir. 1994] [internal citations omitted]). The court also found it significant that the DMV records had been compiled independently of petitioner's arrest. Pet. App. A8.

The New York Court of Appeals affirmed. The state high court noted that petitioner did not contend that his name or identity could be suppressed as the fruit of an allegedly unlawful stop. Rather, he claimed that the DMV records could be suppressed because absent an illegal stop, the police would not have learned petitioner's name and would not have been able to obtain the records. Pet. App. A3. The court examined federal circuit court decisions holding that the exclusionary rule has no application when the police unlawfully stop someone, learn his name, and use that name to check preexisting government immigration records. See id. (citing United States v. Farias-Gonzalez, 556 F.3d 1181, 1189 [11th Cir. 2009]; United States v. Bowley, 435 F.3d 426, 430-31 [3d Cir. 2006]; United States v. Roque-Villanueva, 175 F.3d 345, 346 [5th Cir. 1999]; Hoonsilapa v. INS, 575 F.2d 735, 737 [9th Cir. 1978]). Relying on these decisions, as well as this Court's decision in Lopez-Mendoza,

the New York high court held that petitioner's DMV records were not subject to suppression as fruits of a purportedly unlawful stop. Pet. App. A3.

The Court of Appeals found further support for its holding in United States v. Crews, 445 U.S. 463 (1980). See Pet. App. A3. In Crews, a plurality of the Court held that "'[t]he exclusionary rule enjoins the Government from benefiting from evidence it has unlawfully obtained; it does not reach backward to taint information that was in official hands prior to any illegality.'" Pet. App. A3 (quoting Crews, 445 U.S. at 475). DMV records, the New York high court reasoned, like other preexisting records already in possession of the government, are not subject to suppression. Pet. App. A3.

In addition, the Court of Appeals distinguished this case from Davis v. Mississippi, 394 U.S. 721 (1969), and Hayes v. Florida, 470 U.S. 811 (1985), on two distinct grounds. First, the defendants in those cases, unlike petitioner, were illegally stopped for the purpose of obtaining fingerprints, which were not preexisting, to connect them to crimes under investigation. Second, the fingerprints were used to establish the defendants as perpetrators of a crime, not merely to establish the identities of the individuals stopped by the police. Pet. App. A4.

Lastly, the court reasoned that its ruling would not give the police an incentive to illegally stop, detain and search individuals. Because any evidence recovered in the course of such a stop is still subject to the exclusionary rule, the court explained, the police would be sufficiently deterred from conducting illegal car stops. Pet. App. A4.

Two judges dissented, arguing that DMV "records are subject to suppression if obtained by the police through the exploitation of the Fourth Amendment violation." Pet. App. A5.

ARGUMENT

This case presents the narrow question of whether pre-existing government documents—here, DMV records—are subject to suppression, where police learn the identity of a driver through an allegedly unlawful traffic stop, and then procure his DMV records. The New York Court of Appeals correctly held below that the exclusionary rule has no application in this context, and petitioner offers no legitimate reason for this Court to review that decision. Accordingly, the petition for certiorari should be denied.

Petitioner points this Court to a purported split among the federal courts on the applicability of the exclusionary rule to fingerprints and related evidence used to establish a defendant's immigration status. See Pet. 23-25, 27. However, any division among the courts on the issue is not implicated here. See Point I, infra. All of the cases cited by petitioner involve fingerprints (and in some instances other types of evidence) that are obtained in the course of an unlawful search and seizure, and later used in a criminal proceeding brought under 8 U.S.C. § 1326.[4] While the decisions cited by petitioner discuss the import of this Court's decision in INS v. Lopez-

[4] 8 U.S.C. § 1326 makes it a crime to be present in the United States after having been previously deported.

Mendoza, they do so in the context of a specific type of evidence and a specific criminal statute, neither of which is at issue in the decision below.

With respect to the question that was actually decided below, the New York Court of Appeals reached the correct result. See Point II, infra. Lopez-Mendoza suggests that a defendant's identity cannot be the subject of suppression in any circumstance. See 468 U.S. at 1039-40. Precedent that predates Lopez-Mendoza, in particular United States v. Crews, 445 U.S. 463, confirms this principle.

Finally, this case provides a poor vehicle for resolving any issues regarding the scope of the exclusionary rule. See Point III, infra. Although the People argued before the trial court that the stop of petitioner's car was indeed lawful, the trial court did not address this point. Even if this Court were to grant certiorari and rule in petitioner's favor on the legal question presented here, a remand would be required to determine the legality of the stop. If the traffic stop was found to be lawful, as is likely, then petitioner's DMV records would not be subject to suppression in any event.

I. To the extent that there is a split among the federal circuit courts, it is not implicated in this case.

Petitioner claims that the federal circuit courts are divided "as to the applicability of the exclusionary rule to pre-existing identity-related documents

maintained by the government." Pet. 14. To the extent petitioner has identified a valid split, however, it is not implicated here.

According to petitioner, the Fourth, Eighth, and Tenth Circuits have held that "identity-related" evidence is subject to suppression,[5] while the Third, Fifth, Ninth, and Eleventh Circuits have reached the opposite result. See Pet. 23-25 (comparing United States v. Oscar-Torres, 507 F.3d 224 [4th Cir. 2007]; United States v. Guevara-Martinez, 262 F.3d 751 [8th Cir. 2001]; and United States v. Olivares-Rangel, 458 F.3d 1104 [10th Cir. 2006], with Bowley, 435 F.3d at 426; Roque-Villanueva, 175 F.3d at 345; Guzman-Bruno, 27 F.3d at 420; and Farias-Gonzalez, 556 F.3d at 1181).[6]

None of these cases, however, are directly on point. The decisions cited by petitioner all address the applicability of the exclusionary rule to fingerprint evidence, and in some cases other types of evidence, obtained from undocumented immigrants

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[5] While focusing on a purported split among the circuits, petitioner also cites United States v. Juarez-Torres, 441 F.Supp.2d 1108 (D. N.M. 2006). There, the district court set forth a view regarding the scope of the exclusionary rule that is arguably at odds with the one adopted by the court below. However, Juarez-Torres, unlike the case at issue here, concerns a prosecution under 8 U.S.C. § 1326. In any event, a difference of opinion between a single district court and a state court does not warrant review by this Court. See Supreme Court Rule 10(b).

[6] Petitioner fails to cite the Sixth Circuit's holding that under Lopez-Mendoza, a defendant's identity is not suppressible. See United States v. Navarro-Diaz, 420 F.3d 581, 588 (6th Cir. 2005). Additionally, while the Ninth Circuit has more recently suggested that in some instances fingerprints obtained after an unlawful arrest may be subject to suppression, it has otherwise stood by the general principle that evidence relating to a defendant's identity is not suppressible as fruit of the poisonous tree. See United States v. Garcia-Beltran, 443 F.3d 1126, 1131-35 (9th Cir. 2006).

who are charged with violating 8 U.S.C. § 1326, which criminalizes presence in the United States following deportation.

At issue in this line of cases is not whether mere identity is suppressible, or even whether pre-existing evidence is suppressible because it was located merely by learning a defendant's identity, but rather whether fingerprint evidence generated only after, and as the result of, improper police behavior can be suppressed. See Oscar-Torres, 507 F.3d at 226, 229; Olivares-Rangel, 458 F.3d at 1105, 1112-13; Guevara-Martinez, 262 F.3d at 752, 754-55. In fact, two of the cases relied upon by petitioner expressly distinguish between mere identity and identity-related evidence. See Oscar-Torres, 507 F.3d at 230 ("Despite the illegality of his detention or arrest, [a defendant] cannot suppress his person or the fact of his identity."); Olivares-Rangel, 458 F.3d at 1111 ("The language in Lopez-Mendoza merely says that the defendant cannot suppress the entire issue of his identity."). Likewise, the Eighth Circuit appears to have distinguished between a defendant's identity, which it would not suppress, and "identity evidence," *i.e.*, fingerprints, which are subject to suppression. See United States v. Perez-Perez, 337 F.3d 990, 993-94 (8th Cir. 2003); United States v. Navarro-Diaz, 420 F.3d 581, 585 (6th Cir. 2005) (discussing the Eighth Circuit's subsequent narrowing of its holding in Guevara-Martinez); see also 6 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment, § 11.4(g) n.415 (4th Ed. 2004 & Supp. 2008-09).

Unlike these cases, the decision below does not involve section 1326, or fingerprint evidence. And contrary to what petitioner suggests, see Pet. 21, 25-26, the state high court did not hold that anything which could broadly be considered "identity-related evidence," such as fingerprints or witness identifications, are completely shielded from suppression. Rather, the court below "merely" held that pre-existing government records cannot be deemed the fruit of the poisonous tree when "the only link" between the assertedly improper police activity and those records "is that the police learned the defendant's name" as a result of that activity. Pet. App. A4. Thus, any limitation that the court below imposed on the scope of the exclusionary rule is quite narrow: the mere fact of a person's identity is not subject to suppression, whether directly or as a link in a causal chain that supposedly leads to some other evidence.

Indeed, even the circuits that have allowed suppression of fingerprint evidence in section 1326 cases would not likely apply the fruits doctrine on the facts presented here. Those courts distinguished fingerprints that were taken as part of a routine booking procedure, which were not suppressible, from fingerprints "obtained for an investigatory purpose exploiting the unconstitutional arrest," which could be suppressed. See Olivares-Rangel, 458 F.3d at 1121; Oscar-Torres, 507 F.3d at 231-32 (same; citing Olivares-Rangel); Guevara-Martinez, 262 F.3d at 753, 755-56 (same); see also Perez-Perez, 337 F.3d at 903-04. Put another way, the courts recognized the distinction between fingerprints obtained merely to identify a person and those

investigatory purpose

actually created to serve as evidence. Here, contrary to petitioner's contention, see Pet. 20-21, the record is devoid of any evidence that the stop of petitioner's vehicle was motivated by an investigatory purpose rather than an administrative one. Thus, even under the rule set forth in Olivares-Rangel, Oscar-Torres, and Guevara-Martinez, suppression would not be an available remedy.

II. The decision below is fully consistent with this Court's precedent.

While petitioner contends that the decision below is at odds with numerous Fourth Amendment precedents of this Court, see Pet. 15-26, the analysis and holding of the New York Court of Appeals is fully consistent with relevant Supreme Court precedent.

Petitioner claims that the decision below misinterprets this Court's ruling in Lopez-Mendoza, see Pet. 21-26, but Lopez-Mendoza appears to resolve the question presented here in favor of respondent. There, the Court held that "the 'body' or identity of a defendant . . . in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest." 468 U.S. at 1039. Since the identity of the petitioner is all that was obtained by the police, that should end the inquiry. While petitioner claims that the Court in Lopez-Mendoza meant only to reiterate the well-established rule that a defendant can never use the exclusionary rule to contest personal jurisdiction, see Pet. 21-23, it likely would have stated simply that the "body" of a defendant is not subject to suppression had it so intended. More fundamentally, the

jurisdictional rule logically must mean that identity can never be suppressed. After all, if a defendant "can suppress the Government's evidence of who he is, then he has accomplished the same thing he would have accomplished had he suppressed the ability of the court to exercise jurisdiction over him." Farias-Gonzalez, 556 F.3d at 1188. In other words, if the government can never use the mere fact of a defendant's identity once they learn it as a result of an unlawful arrest, then it would never be able to locate him and bring him before the court.

Moreover, even if the reach of Lopez-Mendoza were unclear, this Court had concluded prior to Lopez-Mendoza that a defendant could not use his mere identity as a basis for a "poisonous fruit" claim. In Crews, a majority of the Court found that a defendant's "face," or appearance, was not a suppressible fruit of an illegal arrest. See Crews, 445 U.S. at 477 (Powell, J., joined by Blackmun, J., concurring), 477-79 (White, J., joined by Burger, C.J. and Rehnquist, J., concurring). Notably, Crews involved a claim that a subsequent in-court identification of a defendant had to be suppressed where the defendant's identity was obtained through an unlawful arrest. See id. at 465.[7]

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[7] Since the principle that mere identity is not a suppressible fruit predates Lopez-Mendoza, it is not surprising that three federal circuit courts have held that the identity of a defendant is not suppressible, without relying on Lopez-Mendoza. See United States v. Arias, 678 F.2d 1202, 1206 (4th Cir. 1982) (citing Crews for the proposition that "the identity of defendants is not suppressible under the exclusionary rule"); United States v. Adegbite, 846 F.2d 834, 838-39 (2d Cir. 1988) (quoting Arias); Farias-Gonzalez, 556 F.3d at 1185-86 & n.5, 1189 (concluding that the disputed language in Lopez-Mendoza was dicta. (Continued...)

As the court below recognized, see Pet App. A3, Crews also suggests that the very nature of DMV records precludes any application of the exclusionary rule. Information that is in the possession of a public agency and has been compiled independently of and prior to an illegal stop is not suppressible as the "fruit" of that stop. See Crews, 445 U.S. at 475-77 & n.22 (plurality) ("The exclusionary rule ensures the Government from benefiting from evidence it has unlawfully obtained; it does not reach backward to taint information that was in official hands prior to any illegality."); see also Bynum v. United States, 274 F.2d 767 (D.C. Cir. 1960) (cited with approval in Crews, 445 U.S. at 476-77, and Davis, 394 U.S. at 725-26 n.4). Indeed, evidence already in existence—and in the possession of the government—before any purported illegality cannot be viewed as the fruit of that illegality. After all, Fourth Amendment interests in preventing the government from searching for or seizing evidence cannot be implicated when the government already possesses the evidence. See generally Hudson v. Michigan, 547 U.S. 586, 594 (2006) (since the knock and announce rule for the execution of search warrants does not protect one's interest in preventing the government from seeing or taking evidence described in the warrant, the exclusionary rule is inapplicable for a violation of the knock and announce rule).

(...Continued)
but still holding "that the exclusionary rule does not apply to evidence to establish the defendant's identity in a criminal prosecution").

Finally, this case is plainly distinguishable from Davis, 394 U.S. at 721, and Hayes, 470 U.S. at 811, as the court below also recognized. See Pet. App. A4-A5. In both Davis and Hayes, the evidence suppressed came into existence only after the unlawful stop or seizure, and as a direct product of the unlawful conduct. Indeed, in both cases, the police illegally detained defendants for the sole purpose of generating their fingerprints, so that they could compare those fingerprints to ones found at crime scenes. See Davis, 394 U.S. at 722-23; Hayes, 470 U.S. at 812-13. Here, by contrast, petitioner's DMV records were not only in existence before the purportedly illegal behavior, they were also in the government's possession before that behavior. And in both Davis and Hayes, the police were looking all along to generate proof that the defendants had committed specific crimes that the police were investigating; here, by contrast, the police simply wanted to know the identity of a driver they had stopped for playing music too loudly. See Pet. App. A4 (noting that the evidence in Davis and Hayes "established defendants' 'identities' as the perpetrators, but not their 'identities' in the sense relevant here").

III. This case presents a poor vehicle for resolving any questions about the scope of the exclusionary rule.

Because no court has yet decided if the police conduct at issue here was unlawful, this case presents an especially poor vehicle for resolving any questions about the scope of the exclusionary rule.

In response to petitioner's motion to suppress his DMV records, the People alleged that petitioner was properly stopped for playing loud music from his vehicle. See Pet. App. A39 (People's Affirmation in Response to the Defendant's Omnibus Motion); see also Pet. App. A2 (noting that "[t]he police stopped [petitioner] for playing music too loudly"). [5] The trial court, however, ruled only on the applicability of the exclusionary rule, without reaching the question of the legality of the traffic stop.

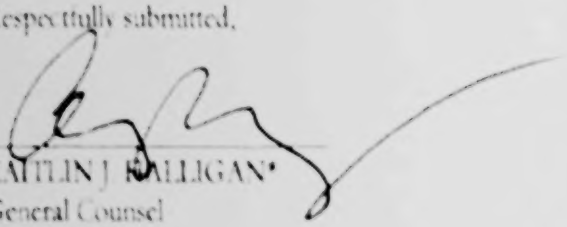
For this reason, even if this Court were to grant the petition for certiorari and hold that DMV records are subject to suppression in the circumstances presented here, a remand would be required to determine whether the records should, in fact, be suppressed. If the trial court concluded that the stop was lawful – and petitioner has not yet offered any reason to hold otherwise – then the records would be admissible. Thus, the question presented is not likely to be outcome determinative.

[5] Several provisions of the New York City Administrative Code in effect at the time petitioner was stopped prohibited the operation of any sound-making device in, inter alia, any vehicle operated on a public street in a manner that creates unreasonable noise. See N.Y.C. Code § 24-220(a); § 10-108(a).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

BY 

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